# POLICE BODY WORN CAMERAS (BWC)

Attorney General Law Enforcement Directive No. 2015-1



#### Purpose

- AG Directive No. 2015-1 was issued to provide guidance to police departments on the use and deployment of BWCs.
- The Directive is intended to establish statewide standards concerning BWC policy.
- N.J.S.A. 52:17B-98 dictates that the Attorney General is responsible for general oversight of law enforcement, and for ensuring the uniform and efficient enforcement of the criminal laws and the administration of criminal justice.

#### Governing Principles

(Section 1 of Directive 2015-1)

# Establishing Uniform Statewide Standards While Permitting Departmental Policies to Address Local Concerns

- 1) All policies must limit the discretion of individual officers in the field.
- Decision to activate BWC must be based on objective criteria as listed in the Directive and the individual department's policy.
- Reasons for exercising discretion on BWC deactivation must be documented.
- Law enforcement agencies can adapt BWC policies to address local concerns, as long as they are consistent with AG Directive No. 2015-1.

# Establishing Uniform Statewide Standards While Permitting Departmental Policies to Address Local Concerns (continued)

- Directive is designed to help police departments balance police safety, accountability and transparency with consideration for the privacy interests of the public.
- Each law enforcement agency will decide whether to acquire BWCs, which officers will be equipped with them and the circumstances under which they will be deployed, consistent with Directive 2015-1.
- 7) Each department will develop its own policy or SOP concerning BWC's.
- 8) Once an officer is equipped with a BWC, the Directive and local SOP will provide guidance on how the device will be used.

#### Reasons for Deploying BWCs

- 1) BWCs provide objective evidence of what took place in a police-citizen encounter.
- 2) BWCs discourage all parties from engaging in inappropriate conduct and from providing false information about an encounter.
- 3) BWC recordings capture accurate visual depictions of evidence including where and how evidence was found.

### Reasons for Deploying BWCs (continued)

- 4) BWC recordings capture the physical appearance of suspects and victims.
- 5) BWC audio recordings document witness and suspect statements.
- 6) BWCs are not intended to replace accurate, professional police reports and officer testimony. Rather, BWCs will serve to supplement and corroborate these important law enforcement tools.

# Practical and Policy-Related Differences Between BWCs and Vehicle-Mounted Video Cameras

- Many police departments have been utilizing vehicle-mounted cameras for years and have established policies in place.
- Although experience with MVRs or "dashcams" is useful, existing dash-cam policies cannot simply be copied and applied to BWCs.
- BWCs raise additional privacy issues that dash-cam policies were not required to address.

#### Definitions

#### (Section 2 of Directive 2015-1)

- Body Worn Camera: device worn by a law enforcement officer that makes an audio/video recording of activities that take place during any law enforcement action. The definition <u>excludes</u> "dash-cams," recording devices worn during undercover operations and devices used to comply with Rule 3:17 (recording of stationhouse custodial interrogations).
- Constructive Authority: same definition as in the AG's Use of Force Policy, except, for purposes of this Directive, the term shall only apply to Constructive Authority directed against: (1) any person who is subject to an investigative detention or arrest, or (2) any person involved in situations in which the officer has un-holstered a firearm or a conducted energy device.

#### Definitions (continued)

- Force: same definition as in the AG's Use of Force Policy. The definition shall include physical, mechanical, enhanced mechanical, and deadly force.
- Investigation of a Criminal Offense: any police activity pertaining to the investigation of an indictable crime, disorderly persons offense, or petty disorderly offense, including but not limited to responding to a report of a possible criminal offense. The term includes investigative detentions, arrests, interviews of potential witnesses, and canvassing an area for potential witnesses.

# Police Department Policies Governing Deployment and Use of BWCs and Recordings

(Section 3 of Directive 2015-1)

### Promulgation of Police Department Policies and Procedures

- Every law enforcement agency that already equips officers with BWCs must develop and enforce a policy that complies with AG Directive No. 2015-1 by September 26, 2015.
- Any law enforcement agency that has not utilized BWCs prior to the issuance of AG Directive No.
   2015-1 shall not deploy them until a policy is issued that complies with the Directive.
- A BWC shall only be used for official police duties and any BWC recording shall only be accessed for an official purpose specified in the Directive.

### Officers Authorized to Wear/Use BWCs

- Chief law enforcement officer of the department shall decide which officers will be equipped with BWCs and which types of assignments shall require use of BWCs.
- In situations involving a task force, team or unit composed of officers from multiple agencies, the chief law enforcement officer of the agency overseeing the task force, team or unit shall make the determination concerning the deployment/use of BWCs. This shall be the County Prosecutor in the case of a countywide task force.

### Officers Authorized to Wear/Use BWCs (continued)

- Officers shall not wear BWCs unless authorized to do so and not until they have received training on the proper use of the BWC, departmental policy and AG Directive No. 2015-1.
- Agencies may develop pilot programs to determine under what circumstances/duty assignments the deployment of BWCs would be most useful.

### Duty to Inspect and Report Malfunctions

- Officer equipped with BWC is responsible for ensuring it is fully functional and charged at the start of the officer's shift.
- Officer shall report any malfunction to a supervisor before going into the field.
- Any malfunction that occurs during a shift shall be reported by the officer to a supervisor as soon as it is safe and practicable to do so.

# Applicability of and Compliance with AG Law Enforcement Directive No. 2005-1

- AG Law Enforcement Directive No. 2005-1 strictly prohibits any form of raciallyinfluenced policing.
- Every decision to activate or de-activate a BWC is subject to Directive No. 2005-1.

#### Training

Departments that deploy BWCs shall designate one or more training officers and shall establish a training program to ensure officers are familiar with department policy and the statewide Directive.

# Notice That BWCs Are Deployed/Activated

(Section 4 of Directive 2015-1)

#### General Policy Considerations

- Until knowledge of BWCs becomes universal, citizens shall be given notice about the use of BWCs and about the rules surrounding deployment of BWCs, as stated in AG Directive No. 2015-1 & SOP established by the agency.
- Public notice will discourage the provoking of officers and the filing of false complaints against officers.

#### General Public Notice

- Departments that acquire BWCs shall post a statement on their website, or on the municipality's website, notifying the public about the acquisition and use of BWCs.
- Posting shall include a picture of a BWC and how it will be worn by officers.

### Specific Notice to Certain Individuals During an Encounter

- Whenever BWC activation is required: (1) during an encounter inside a civilian's residence or (2) with a person reasonably believed to be a crime victim, the officer shall verbally notify the person that the BWC has been activated.
- Verbal notification is not necessary if it is unsafe or not feasible to do so, but the reasons for the failure to notify should be documented on the BWC recording or in a report.
- Lack of verbal notification in these circumstances shall not affect the admissibility of any statement or evidence.

### Truthful Response to Specific Inquiries

- Officer shall answer truthfully when a civilian asks if the officer is equipped with a BWC or if it is activated.
- Exceptions are if the officer has been authorized by County Prosecutor (or DCJ Director) to make a covert recording. Note that recordings made during police undercover operations or stationhouse custodial interrogations are not covered by this Directive (No. 2015-1).

# Standards Governing the Activation of BWCs

(Section 5 of Directive 2015-1)

### BWCs Used Only in Performance of Official Duties

- BWCs shall be activated only while in performance of official police duties.
- BWCs shall not be activated for personal purposes, while on breaks, when engaged in police union business, or during conversations involving counseling, personnel evaluations, or other similar supervisory interaction.

### Circumstances When Activation by a Uniformed Officer Generally is Required

Unless a specific provision of AG Directive 2015-1 directs that a BWC not be activated, uniformed officers equipped with BWC's are <u>required</u> to activate their BWCs, as soon as it is safe and practicable to do so, when involved in <u>any</u> of the following circumstances:

- Officer initiates an investigative detention, including motor vehicle stops, criminal suspicion stops, and checkpoint/roadblock stops.
- Officer is responding to a call for service and is at or near the location of the call.
- Officer is conducting a motorist aid or community caretaking check.

#### Circumstances When Activation by a Uniformed Officer Generally is Required (continued)

- Officer is interviewing a witness in the course of investigating a criminal offense.
- Officer is conducting a custodial interrogation of a suspect, unless the interrogation is otherwise being recorded (recording of stationhouse custodial interrogations per Rule 3:17).
- 6) Officer is making an arrest.
- 7) Officer is conducting a protective frisk for weapons.
- 8) Officer is conducting any kind of search, including a consensual search.

#### Circumstances When Activation by a Uniformed Officer Generally is Required (continued)

- Officer is engaged in a police response to any type of civil disorder in circumstances where the officer is engaged with or in the presence of civilians and the officer or another officer on scene may be required to use constructive authority or force.
- Officer uses constructive authority or force, or reasonably believes it may be used, in any type of encounter not otherwise listed. In this situation the officer should articulate the facts supporting the need for heightened caution on the recording and/or in related police reports.
- Officer is transporting an arrestee to a police station, county jail or other place of confinement, hospital, or any medical care or mental health facility.

#### Circumstances When Activation by a Uniformed Officer Generally is Required (continued)

Officer reasonably believes that any other officer on scene has undertaken or is engaged in any of the above listed police actions/activities.

AG Directive 2015-1 recognizes that MANY police-citizen encounters will involve more than one of the above listed circumstances, any one of which requires the activation of a BWC. In addition, a police-citizen encounter that initially did not require BWC activation may change/escalate into a situation requiring activation. Nothing in the Directive should be construed or applied in a manner that jeopardizes officer safety by distracting the officer's attention from an immediate need to use constructive authority or force.

#### Authority to Specify Additional Police Activities When Uniformed Officers Must Activate BWCs

- An agency may create a policy with additional circumstances in which an officer must activate a BWC, in addition to those required in the Directive, as long as the policy is consistent with the AG Directive.
- Any department policy must limit the discretion of officers and must clearly establish the <u>objective</u> circumstances that require activation.

### Continuous Recording Pending Completion of Encounter

- In situations requiring activation, BWC should be activated by the officer before arrival at the scene whenever possible.
- When required to be activated, a BWC must remain activated throughout the entire encounter/event and shall not be de-activated until the event is concluded (unless an exception applies).
- When a BWC is activated for the transport of an arrestee, it shall remain activated until the officer is no longer in the presence of the arrestee (arrestee is secured in processing room/holding cell or the arrestee is transferred to other law enforcement or medical personnel).

### Provisions Governing Use of BWCs by Plainclothes Officers

- Agencies are given flexibility to decide when and under what circumstances plainclothes officers will wear and use BWCs.
- Agency policy shall specify the circumstances when a plainclothes officer shall be required to activate and de-activate the BWC. The policy shall limit individual officer discretion and be consistent with Directive 2015-1.

#### Special Activation Rules Governing Deadly-Force Incidents and Other Exigent Circumstances Where Officers Are in Danger

- Officer shall activate the BWC before arriving at a scene where the officer knows or reasonably believes that police deadly force has been or is being employed OR a scene where an officer has requested emergency assistance (officer in distress, shots fired, etc.).
- Notwithstanding any other provision, an officer shall not de-activate the BWC unless instructed to do so by the prosecutor or designee supervising the investigation of the deadly force incident. See AG's Supplemental Law Enforcement Directive Amending Directive 2006-5, issued 7-28-15.

Standards Governing the De-Activation of BWCs Upon the Request of a Civilian, When Discussing Investigation Strategy/Planning, or on Instruction of a Prosecutor

(Section 6 of Directive 2015-1)

# De-Activation at the Request of a Civilian Providing Information/Cooperation

- Officer may de-activate a BWC when a civilian requests that it be turned off under circumstances where it appears the civilian will not provide information/cooperation unless the request is granted.
- Request for de-activation must be self-initiated by the civilian and not suggested by the officer.
- In making the decision, officer shall consider privacy/safety interests of citizen, location of the encounter and the need for the information.

# De-Activation at the Request of a Person Seeking Emergency Medical Assistance

Officer may de-activate a BWC when a person is seeking emergency medical services for himself or herself or for another and requests that the BWC be de-activated. This provision does not apply to arrestees.

### Procedures for De-Activation Upon a Civilian's Request

- Procedures to follow when an officer deactivates a BWC upon a civilian's request:
  - 1) Conversation between officer and civilian about the request for de-activation shall be recorded.
  - 2) Officer shall narrate the circumstances of the deactivation before turning off the device.
  - 3) Officer shall report the de-activation to a supervisor as soon as possible .
  - 4) Officer shall document the circumstances of the de-activation in any incident report.

## Decision to Decline a Civilian's De-Activation Request

- Officer's reason for declining a de-activation request must be documented and reported to a supervisor as soon as it is safe to do so.
- Officer shall immediately inform the civilian of the decision to decline a de-activation request.
- Misleading the civilian is prohibited unless covert recording has been authorized by the County Prosecutor, DCJ Director, or their designees.

## De-Activation During Criminal Investigation Strategy/Planning Discussions

- Unless the officer's agency policy provides otherwise, an officer may de-activate a BWC while discussing criminal investigation strategy and planning if:
  - a) the discussion is not in front of a civilian, or
  - b) the officer not actively collecting evidence.
  - c) The agency's policy may limit this authority.
- Officer shall narrate the circumstances of the de-activation on the BWC recording.

#### De-Activation on Instruction from Prosecutor

- Officer may de-activate a BWC when authorized to do so by the Prosecutor, Assistant Prosecutor, Assistant Attorney General or Deputy Attorney General.
- Officer shall narrate the circumstances of the de-activation by indicating the name of the prosecutor who authorized the de-activation.

## Re-Activation When Reason for De-Activation No Longer Exists

■ Any de-activated BWC shall be re-activated when the circumstances justifying de-activation no longer exist, and the officer would otherwise be required to activate the BWC (the officer is involved in investigative activities that require activation under AG Directive 2015-1, see Section 5).

#### Re-Activation When Actual Law Enforcement Force is Authorized

In ANY instance where a BWC has been deactivated, if circumstances later develop indicating that an officer may be required to use force, the de-activated BWC shall be reactivated as soon as it is safe and practicable.

# Circumstances When BWC Activation/Use is Subject to Special Conditions/Restrictions

(Section 7 of Directive 2015-1)

## Special Restrictions When Recording in Schools, Healthcare/Treatment Facilities, and Places of Worship

- Unless an officer is actively engaged in investigating a criminal offense, is responding to an emergency, or believes force or constructive authority will be used, an officer shall not activate a BWC or shall de-activate an activated BWC, while the officer is:
  - a) In a school or youth facility where minors would be in view of the BWC.
  - b) In a healthcare facility, medical office, or substance abuse treatment facility where patients would be in view of the BWC.
  - c) In a place of worship where worshipers would be in view of the BWC.
- 2) Officer shall narrate the reason for de-activation.

## Special Restrictions When Recording in Schools, Healthcare/Treatment Facilities, and Places of Worship (continued)

- Officer shall re-activate the BWC when circumstances requiring de-activation no longer exist.
- Any time a BWC captures the image of a patient in a substance abuse treatment facility, the County Prosecutor or DCJ Director or their designees must be notified.

## Special Restrictions When Undercover Officers or Confidential Informants May Be Recorded

- Officer shall not activate or shall de-activate an activated BWC if the BWC would capture the image of an undercover officer or confidential informant or pose a safety risk to either person.
- Exceptions: (1) If the danger posed to an officer (active shooter, actual police use of force, officer in distress, etc.) requires the BWC to be activated, in such case the officer shall inform a supervisor that the image of an undercover officer or confidential informant was recorded, or (2) Whenever activation is expressly authorized by a supervisor.

#### Special Precautions When a BWC Recording May Reveal Tactical Operations Information

Whenever a BWC worn during a tactical operation (Special Operations, SWAT, Execution of Search and/or Arrest Warrant, etc.) records confidential or tactical information, the disclosure of which might jeopardize future operations or officer safety, the recording shall be "tagged" for special consideration in order to limit disclosure.

## Special Restrictions on Recording in Courtrooms

Officer shall not activate a BWC while in a courtroom during court proceedings, unless the officer is responding to a dispatch, is authorized to use constructive force, or is expressly authorized by the judge.

#### De-Activation/Removal of BWC From Alcohol Breath Testing Area

- If the BWC model selected by a department produces radio-frequency interference when activated or in standby mode, the device shall be de-activated or removed (if necessary) while in the area where an electronic alcohol breath testing device is being used.
- Officers should narrate the reason for deactivation/removal of the BWC prior to doing so and then re-activate when safe and practicable following the completion of breath testing.

#### Restrictions on Using BWCs With Enhanced Audio/Visual Capabilities

If a department acquires a BWC with enhanced audio/video capabilities that capture images or conversations beyond what the officer can see or hear (infrared night vision, thermal imaging, sound amplification), that feature shall not be used without approval from the County Prosecutor or designee, or the Director of the Division of Criminal Justice or designee.

#### Retention of BWC Recordings

#### (Section 8 of Directive 2015-1)

- Police department policies shall specify a retention period for BWC recordings. The period shall be no less than 90 days, with the following additional retention periods:
  - 1) When a BWC recording pertains to a criminal investigation or prosecution, it shall be treated as evidence and kept in accordance with the retention period for evidence in a criminal prosecution.
  - When a BWC records an arrest that did not result in prosecution or records the use of police force, the recording shall be kept until the expiration of the statute of limitations for filing a civil complaint against the officer and/or agency.
  - 3) When a BWC records an incident that is the subject of an internal affairs complaint, the recording shall be kept pending final resolution of the internal affairs investigation and any resulting administrative action.

# Standards to Ensure Secure Storage and Accessibility of BWC Recordings

(Section 9 of Directive 2015-1)

## Procedures to Protect Integrity of BWC Recordings

- Every department that uses BWCs shall establish a system to ensure proper handling and storage of all BWC recordings.
- The system shall:
  - 1) Ensure that all recordings are uploaded to a secure data storage system in a timely fashion.
  - 2) Prevent tampering with or deletion of recorded data.
  - 3) Prevent unauthorized access to recordings.
  - 4) Document all instances when recordings are accessed, viewed, copied, disseminated, or deleted.
  - 5) Permit auditing of all instances where BWC recordings are accessed, viewed, copied, or deleted.

## Capacity to Locate Specific BWC Recordings

- Every department that deploys BWCs shall create a system that permits the agency to locate and retrieve all recordings associated with a specific incident/event, case, investigation or criminal charge.
- Every department that deploys BWCs shall also develop a BWC control ledger or log.
- Police reports should indicate whether the described incident was recorded by a BWC and, if so, should indicate the corresponding BWC control ledger/log number in the report.

#### Provisions to Identify ("Tag") Recordings That Raise Special Privacy or Safety Issues

- Every department that uses BWCs shall implement a system that "tags" any recording that:
  - 1) Captures the image of a crime victim.
  - 2) Captures the image of a child.
  - 3) Was made in a residential location, school or youth facility, healthcare facility or medical office, or substance abuse or mental health treatment facility, or place of worship.
  - 4) Captures a conversation with a person whose request to deactivate the BWC was declined.
  - 5) Captures an event where confidential law enforcement tactical information may have been recorded.
  - 6) Captures the image of an undercover officer or confidential informant.
  - 7) Captures the screen of a police computer monitor that is displaying confidential information.

## Approval for Access to "Tagged" BWC Recordings

- "Tagged" BWC recordings shall not be accessed, viewed, copied, disseminated, or otherwise used without permission of the County Prosecutor or designee, or the Director of the Division of Criminal Justice or designee.
- Prosecutor or DCJ Director may authorize Police Chief and one or more superior officers/duty positions in each department to grant permission, limited to the situations described in Section 10.1 of AG Directive 2015-1, for others to access, view, copy, or disseminate "tagged" BWC recordings. This authority shall be subject to the restrictions outlined in Section 9.4 of the same Directive.

## Compliance with Discovery Obligations Relating to BWC Recordings That Might Expose Officers or Other Persons to Danger

 If disclosure of a BWC recording as part of the State's discovery obligation in a prosecution may present a danger to an officer or civilian or may reveal confidential tactical information, the County Prosecutor or designee, or Director of the Division of Criminal Justice or designee, shall take appropriate steps to prevent the disclosure of the recording. The steps may involve seeking a protective order from the court.

# Restrictions on Access To, Use, and Dissemination of BWC Recordings

(Section 10 of Directive 2015-1)

#### Specified Authorized Purposes for Accessing/Using Stored BWC Recordings

- No law enforcement officer or civilian employee shall access, view, copy, disseminate or use a stored BWC recording except for an <u>official purpose</u>. Access and use are only permitted:
  - When relevant to and in furtherance of a criminal investigation or prosecution, an internal affairs investigation, or a management review process to identify possible police misconduct.
  - 2) To assist the officer whose BWC made the recording in preparing his or her report, unless a use-of-force investigation is being conducted in which case an officer who is a principal or witness must get permission from the prosecutor overseeing that investigation (See AG's Supplemental Law Enforcement Directive Amending Directive 2006-5, issued 7-28-15).
  - 3) When relevant to a supervisor's reviews of an officer's actions.
  - 4) To show to a civilian who intends to file a complaint against an officer, in order to demonstrate to the civilian what actually occurred during the encounter.

## Specified Authorized Purposes for Accessing/Using Stored BWC Recordings (continued)

- 5) To comply with the State's discovery obligation in prosecutions and any other legal obligations.
- 6) To show the recording to a civilian, a non-law enforcement entity, or the public when the County Prosecutor or designee or the DCJ Director or designee determines that the person's/entity's/public's need for access outweighs the law enforcement interest in maintaining confidentiality.
- 7) For training purposes, after the recording has been edited so that the identity of individuals depicted cannot be determined.
- 8) To conduct an audit to ensure compliance with State and department policy.
- 9) To enhance officer and public safety by providing intelligence in preparation for a raid/warrant execution, when approved by County Prosecutor, DCJ Director or designees.
- 10) Other purposes when approved by County Prosecutor, DCJ Director or designees.

# Authorization for Access to BWC Recordings Related to Use-of-Force Investigations

Only the prosecutor overseeing a police use-offorce investigation may authorize a civilian or law enforcement principal/witness to be given access to or view a BWC recording of the incident under investigation, including the onscene investigation of the incident. See AG's Supplemental Law Enforcement Directive Amending Directive 2006-5, issued 7-28-15.

## Documenting Access to Stored BWC Recordings

- Each department that deploys BWCs shall maintain a record of all access to stored BWC recordings, which shall document the following information:
  - 1) Date and time of access.
  - 2) Specific recording(s) that was/were accessed.
  - 3) Officer or employee who accessed the recording.
  - 4) Person who approved access.
  - 5) Reason(s) for access.

#### Public Disclosure of BWC Recordings

(Section 11 of Directive 2015-1)

#### Notice to Prosecutor of Subpoena, Court Order, or OPRA/Common Law Request

Agencies must provide notice within one business day to County Prosecutor or Division of Criminal Justice upon receipt of a subpoena, court order, or OPRA/common law request for a BWC recording. The notice shall be made before complying with the order/request and must specify the deadline for a response to the order/request.

#### Disclosure of BWC Recordings Pertaining to Criminal Investigations

- A BWC recording of an event that involves an investigation of a criminal offense shall only be shared with a law enforcement agency or officer, unless:
  - Disclosure is required by the rules of discovery in a prosecution.
  - A court order is issued.
  - The need for public access outweighs the law enforcement interest in maintaining confidentiality. This decision is to be made by the law enforcement agency, in consultation with the County Prosecutor, the DCJ Director or their designees.

# Authority of County Prosecutor to Impose Additional Requirements

(Section 12 of Directive 2015-1)

■ AG Directive No. 2015-1 does not limit the County Prosecutor's authority to issue additional guidelines related to use of BWC recordings, so long as they do not conflict with the Directive.

# Advisory Group to Report on Implementation and Share Best Practices (Section 13 of Directive 2015-1)

- Director of the Division of Criminal Justice shall form a BWC Advisory Group consisting of community and law enforcement members.
- Advisory Group will review implementation of the Directive and advise the AG on the need for any revisions.

#### Violations (Section 14 of Directive 2015-1)

- Violations of Directive 2015-1 shall be reported to the appropriate County Prosecutor and Director of the Division of Criminal Justice.
- Necessary actions will be taken to ensure future compliance.

#### Non-Enforceability by Third Parties

(Section 15 of Directive 2015-1)

- The provisions of this Directive are meant to be implemented and enforced only by law enforcement agencies that deploy BWCs.
- Requirements within the Directive do not create any promises or rights that may be enforced by any other persons or entities.

#### Link to AG Directive No. 2015-1: <a href="http://nj.gov/oag/newsreleases15/AG-Directive\_Body-Cams.pdf">http://nj.gov/oag/newsreleases15/AG-Directive\_Body-Cams.pdf</a>

Link to AG's Use of Force Policy:

http://www.nj.gov/oag/dcj/agguide/useoff

orce2001.pdf

